IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 416/2002

Judgment delivered on: October 01, 2007

Smt. Tripta Rani & Ors.
W/o Late Basti Ram
R/o Village Nangal Thakran,
Delhi. .....Appellants.

Through: Mr.O.P.Mannie for the appellants.

versus

Surinder Pal ..... Respondent
S/o Sh. Kuntal Lal
R/o GI-153, Uttam Nagar,
New Delhi & Ors.

Through: Ms. Parigul for respondent no.5.
Mr. L.K.Tyagi for respondent no.7

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

By way of this appeal, the appellants have assailed the findings of

the Tribunal mainly on the ground that the Tribunal has wrongly deducted 1/3rd towards personal expenses of the deceased although the deceased who was aged 36 years had at the time of accident left behind his widow and four minor children i.e., two daughters and two sons. Counsel for the appellants contends that future prospects of the deceased even as per the minimum wages were not taken into consideration. The counsel for the appellants contends that correct multiplier as per the Second Schedule was not applied which is 16 years between the age group of 35 to 40 years. Counsel for the appellants contends that the deceased was of 36 years and therefore multiplier of 16 as laid down in the Second Schedule should have been applied by the Tribunal. The appellants are also aggrieved with the grant of less amount of compensation towards consortium which as per the appellants should not have been below Rs.50,000/-. Mr. O.P.Mannie, counsel appearing for the appellants has contended that a very meager amount of Rs.76,000/- has been awarded in favour of the appellants although the deceased was the only bread earner of the family who died at the young age of only 36 years. Counsel further contends that the deceased was supporting a large family comprising of

wife with four minor children and therefore he must be spending more amount towards their maintenance and education and not on himself. Counsel for the appellant contended that the Tribunal has wrongly deducted 1/3rd of the income towards his personal expenses.

Counsel for the appellant also contends that under Section 163-A of the Motor Vehicles Act, the special provision dealing with the grant of compensation has not been dealt with by the Tribunal and on the basis of structured formula a minimum compensation payable for a victim of the accident up to the age of 15 years even though he may be a non-earning person would alone come out at Rs.1,50,000/-. Counsel for the appellants has drawn my attention to the Second Schedule of the Motor Vehicles Act, wherein under Clause '6' notional income for a non-earning person has been specified at Rs.15,000/-, multiplier of 15 has been laid down for a person up to 15 years and 1/3rd of the income is deducted towards the personal expenses and accordingly, therefore, the total amount of compensation for a person up to the age of 15 years would come to at Rs.1,50,000/- by applying the multiplier of 15. Placing reliance on the said Schedule, counsel for the appellants contends that insufficient amount towards compensation has been

awarded in favour of the appellants. Counsel also contends that a meager amount of Rs.15,000/- has been awarded towards non pecuniary damages. The contention of the counsel for the appellants is that the Supreme Court in catena of cases has granted minimum compensation of Rs.50,000/- towards consortium. Mr. Mannie, counsel for the appellants also contends that the appellants have been illegally deprived of the interest on the award amount w.e.f. 15.10.87 till 23.11.95 on the ground that there was delay on the part of the appellants in prosecuting their compensation case.

Per contra, Mr. Tyagi, counsel for the respondent contends that the matter pertains to an accident which had occurred in the year 1986 and therefore, the criteria as laid down in Section 163-A cannot be taken into consideration for determining the compensation in favour of the appellants. Counsel for the respondent further contends that in such cases the Supreme Court has applied the multiplier of 13 years. Mr. Tyagi has placed reliance on the judgment of the Supreme Court in **Managing Director, Tamil Nadu State Transport Corporation Ltd. Vs. I.I.Bindu and Ors. 2006 ACJ 423**. The contention of the counsel for the respondent is that in the said case the deceased was

employed as a UDC in Civil Supplies Corporation and died at the age of 34 years. In that case the Supreme Court applied the multiplier of 13 years instead of 17 years as awarded by the Tribunal and even future prospects were not taken into consideration in the said judgment. Counsel for the respondent also contends that as far as denial of interest from 15.10.87 till 23.11.95 is concerned, no illegality can be found with the findings of the Tribunals as such interest was not granted on account of the fact that the appellants had not impleaded the insurer till 23.11.95.

I have heard the counsel for the parties at great length.

It is an admitted case between the parties that the deceased was taken in the category of unskilled labourer and the minimum wages as applicable on that date under the Minimum Wages Act were taken into consideration i.e., Rs.414/- as applicable on the date of the accident i.e., 29.7.86. It is also not in dispute that the deceased had left behind his widow and four minor children. It is also not disputed that the deceased at the time of his death was only 36 years of age. The Tribunal has taken into consideration the multiplier of 15 years although the same is 16 years as per the Second Schedule, but in a

number of judgments, the Supreme Court has taken the view that the multiplier as laid down in the Second Schedule cannot be accepted as a ready reckoner, and therefore, in a number of cases the Supreme Court has not taken into consideration the multiplier as laid down in the Second Schedule. It is no doubt that in the judgment relied upon by the counsel for the respondent the multiplier of 13 years was taken into consideration in the case where the death of a young man of 34 years had occurred. In that case the deceased had left behind his widow, two children and a mother. In the present case the accident had occurred in the year 1986 when the Second Schedule was not on the Statute of Motor Vehicles Act and even the law in this regard has taken a shape at a later stage as regards the application of multiplier and for considering the various other factors.

While distinguishing the case of (1994) 2 SCC 176: 1994 SCC (Cri) 335, G.M., Kerala SRTC v. Susamma Thomas, in **U.P. State Road Transport Corpn. v. Trilok Chandra, (1996) 4 SCC 362** the Hon'ble Apex Court has held that the Second Schedule cannot be blindly followed. The relevant portion of the said judgment is reproduced below:

> **"17.** The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled "Insurance of Motor Vehicles against Third Party Risks". Section 165-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas case* .
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> To put it briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide."

In the present case the deceased was survived by his four minor children as well as widow, therefore, I do not find any infirmity in the order of the Tribunal so far as the multiplier of 15 is concerned.

The Tribunal had taken into consideration the income of the

deceased at Rs.500/- after taking into consideration the income of the unskilled labourer at Rs.414/- as specified in Minimum Wages Act at the relevant period and after granting some amount towards future prospects the same was enhanced from Rs.414/- to Rs.500/- and after deducting 1/3rd income towards personal expenses, multiplicand of Rs.340/- was taken as the income of the deceased.

I do not find any infirmity in the order of the Tribunal so far as the same is concerned with the applicability of the Minimum Wages Act, as the appellants failed to produce any evidence to support the income of Rs. 5,000/-. However, I do not find any justification for granting a very meager enhancement in the said income from Rs.414/- to Rs.500/- as per the Minimum Wages Act. The deceased would have earned at least a sum of Rs.2579/- after a period of 15 years which period was taken into consideration by the Tribunal towards the total period of dependence of the family. Considering this aspect, I feel that mean of Rs.414/- and Rs.2579/- can be taken into consideration so as to arrive at the correct income of the deceased including his future prospects and the same would be fair and just compensation to be awarded in favour of the appellants. As regards the deduction of 1/3

towards personal expenses is concerned, since the deceased was survived by four minor children and widow, I am of the view that ends of justice can be met by deducting 1/4th of the income towards his personal expenses instead of 1/3rd. I also find that a very meager amount of Rs.15,000/- has been awarded towards non-pecuniary damages, therefore, the same is also directed to be enhanced to Rs.40,000/-. As regards the rate of interest, I do not find any infirmity in the order of the Tribunal.

The matter is remanded back to the Tribunal for carrying out recalculation of the compensation amount and modification of the award in the light of the above directions.

The parties are directed to appear before the Tribunal on 5.11.2007.

October 01, 2007 **KAILASH GAMBHIR, J.**
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